

IN THE UNITED STATES DISTRICT COURT

1

FOR THE DISTRICT OF ALASKA

2

JOHN GILBERT,

3

Plaintiff,

4

vs.

5

APC NATCHIQ, INC.

6

Defendants.

7

Case No. 3:03-CV-00174-RRB

8

DEPOSITION OF CHRISTOPHER B. BOYLE

9

June 1, 2006

10

APPEARANCES:

11

FOR THE PLAINTIFF:

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FOR THE DEFENDANT:

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23

ALSO PRESENT:

MR. JOHN GILBERT

24

* * * *

25

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Pursuant to Notice, the Deposition of CHRISTOPHER B. BOYLE was taken on behalf of the Plaintiff before Cheri Tabor, Notary Public in and for the State of Alaska, and electronic reporter for Metro Court Reporting at the offices of DeLisio Moran Geraghty & Zobel, 943 West Sixth Avenue, Anchorage, Alaska, on the 1st day of June, 2006, commencing at the hour of 9:00 o'clock a.m.

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1 P R O C E E D I N G S

2 (On record)

3 COURT REPORTER: We're on record. My name is
4 Cherri Tabor and I'm a court reporter with Metro Court
5 Reporting in Anchorage, Alaska. Today's date is June 1, 2006,
6 and the time is approximately 9:00 a.m. We are at the offices
7 of DeLisio Moran Geraghty & Zobel, P.C., 943 West Sixth
8 Avenue, Anchorage, Alaska 99501 for the deposition of Chris
9 Boyle. This case is in the United States District Court for
10 the District of Alaska in the matter of Gilbert vs. APC, Case
11 Number 3:03-CV-00174 (RBR).

12 Sir, would you please raise your right hand so I could
13 swear you in.

14 (Oath administered)

15 MR. BOYLE: I do.

16 CHRISTOPHER B. BOYLE

17 Having first been duly sworn under oath, testified as follows:

18 COURT REPORTER: Thank you. Please state your
19 full name and spell your last name for the record.

20 Christopher B. Boyle. B-O-Y-L-E.

21 COURT REPORTER: All right. And I need a
22 mailing address.

23 3900 C Street, Anchorage 99503.

24 COURT REPORTER: Okay.

25 Suite 700.

COURT REPORTER: Okay. Thank you. And how

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about a daytime or a message telephone number.

A 339-6924.

3 COURT REPORTER: All right. Counsel, would
you please identify yourselves and who you represent, and if
you have a guest, please introduce your guest.

6 MR. COVELL: Kenneth Covell for plaintiff John
Gilbert.

8 MS. ZOBEL: And I'm Patricia Zobel. I'm here
on behalf of APC Natchiq, Inc. And I believe Mr. Gilbert is
in the room.

11 COURT REPORTER: All right. You may proceed.

12 MR. COVELL: Thank you.

13 **DIRECT EXAMINATION**

BY MR. COVELL:

Q5 Mr. Boyle, you're the human resources director APC or
16 its progeny, is that correct?

A7 Yes.

Q8 Okay. And you've been in that position since about
19 1994, is that right?

A0 No.

Q1 Okay. '90 -- when have you been in that position
22 since?

A3 With that title, probably late 90s.

Q4 Okay.

A5 Or 2000. Not -- I don't recall exactly.

Q And prior to -- you're the head of the department,

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1 whatever the title might be, right?

A No, I'm not.

Q Okay.

A No, I'm not.

Q All right. Okay. What -- are you the head of
6 something?

7 MS. ZOBEL: His household maybe.

A No, I have a direct supervisor, senior vice president
9 of human resources. I report to him. I am the
10 director of human resources. In that capacity I deal
11 with policies, procedures, et cetera.

Q2 Okay. And the individual that's above you, the vice
13 president, they have other duties besides dealing with
14 human resources, is that correct?

A5 Correct.

Q6 Okay.

A7 And that's senior vice president not vice -- vice
18 president.

Q9 So is it fair to say you're the nuts and bolts, day-
20 to-day man that runs the human resources department?

A1 No.

Q2 Okay.

A3 In certain aspects of the human resources, yes.

Q4 Okay.

A5 But to say the whole department, no.

Q Okay. All right. And in regard -- well, all right.

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1 That's fine. Okay. And as far as people within APC,
2 is -- or you're ASRC Energy Services now? What should
3 we be calling.....

4 I work for ASRC Energy Services.

5 Okay.

6 And there's many subsidiaries beneath that parent
7 organization.

8 Okay. When Mr. Gilbert worked for the organization or
9 a permutation of it, it was known as APC, is that
10 right? Or not?

11 I don't know whether it was straight APC or at that
12 time maybe APC Natchiq.

13 Okay. All right.

14 I'm not sure which one.

15 Okay. And when the organization you're with went
16 through its name change, permutations, and
17 reorganizations, did your area of responsibility
18 expand greatly? In other words, did you have sort of
19 a division with 300 people and then get to be the
20 director of sort of a broad spectrum of companies or
21 divisions with thousands of people?

22 No. It was pretty much the same.

23 Okay. All right. Approximately how many people come
24 under the auspices of your department?

25 Gosh, I can't answer that. I don't know.

Q Okay. Is it tens, hundreds, thousands?

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A Within the organization at that time just APC I
2 believe had close to 1500 to 2000 employees.

Q Okay.

A But I can't -- again, that -- they weren't directly
5 under my auspices as you referenced.

Q Well, what -- well, one of the issues that you in your
7 official capacity would deal with is whether or not
8 somebody is classified as exempt or non-exempt for
9 overtime, right? Or wrong?

A0 I could get involved in reviews.

Q1 All right. So at the time Mr. Gilbert worked there,
12 roughly '01 to '03, how many people could you have an
13 effect on their position as to whether it's exempt or
14 non-exempt?

A5 Gosh, I -- I don't know.

Q6 Okay. Would that be.....

A7 You would be asking me to speculate.

Q8 Would that be in that range of 1500 people?

A9 I -- I'm just citing the population of that
20 organization.

Q1 Okay. Good. That's.....

A2 Yeah.

Q3 I'm just trying to get.....

A4 Approximately.

Q5 Okay. I'm.....

A Yeah.

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Qjust trying to get a drift here. Is that number
2 significantly different today?

A Yes.

Q Okay. And approximately what the -- what might that
5 number be today?

A With -- the organization is now titled ASRC Energy
7 Services Operations and Maintenance.

Q Right.

A And they have close to 2,000 employees.

Q Okay. All right.

A Just that organization.

Q Okay. Now, do you have -- that's -- what I'm trying
13 to find out is did you -- your field of authority, if
14 that's the right way to put it, or the people you
15 provided human resources to has expanded greatly or
16 not?

A Based on -- if you just work it based on the increased
18 number of employees within the organization, just
19 based on that, yes.

Q Okay.

A You know, just based on the increased number.

Q All right. But it didn't go from say 1500 people to
23 10,000 people?

A No.

Q But from maybe 1500 to 2500, something like --
something.....

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A Sure.

Qalong those lines? Okay. Good. All right.

3 MS. ZOBEL: Just to clarify the record, I
think he said 2,000, not 2500.

5 MR. COVELL: That's fine.

A Yeah.

7 MS. ZOBEL: Okay.

Q (By Mr. Covell) Okay. What did you do to prepare for
9 today's deposition, if anything?

A10 I read -- I read my previous deposition.

Q1 Okay. Is there anything about that deposition that
12 you read that you disagree with, that you think was
13 incorrect when you said it, or was misquoted or
14 anything to that effect?

A15 On the brief review I did, no.

Q16 Okay. All right. You were involved with the Zuber
17 case, right?

A18 Yes, I was deposed in that case.

Q19 Okay. And you were involved in assisting the company
20 in getting the papers together and working on the
21 case, right?

A22 In that case, yes.

Q23 Okay. And that's also true in this case?

A24 I've had very minimal involvement in this case.

Q25 Okay. Who at the company -- it's been suggested to me
that you, Mark Nelson and Doug Smith are the people at

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1 the company who would have the most knowledge
2 concerning the matters involved in this case. Would
3 you agree with that, disagree with that, think there's
4 some -- well, would you agree with that or disagree
5 with that?

A It all depends on what the questions are.

Q Okay. Well, as to questions regarding what Mr.
8 Gilbert did -- well, let's put that aside. Questions
9 regarding whether or not his position as safety
10 supervisor is exempt?

A1 I would have very little knowledge of what his day-to-
12 day activities are.

Q3 Okay. But would you have knowledge as to the
14 applicable rules and regulations and now determine
15 whether or not that was an exempt or non-exempt
16 position?

A7 I can just site, you know, the -- the regulations
18 under wage and hour, and but applying that to what his
19 day-to-day activities are, I don't know how those
20 connect.

Q1 Okay. Is there anybody in the company that does know
22 how those connect?

A3 His direct supervisor at the time I'm sure.

Q4 And that would be Doug Smith?

A5 I believe that's correct.

Q Okay. All right. When Mis -- you have expertise in

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1 the field of human relations, right?

A Human resources.

Q Human resources, I'm sorry. Excuse me. All right.

4 Human resources. And that would -- was that a yes?

A Yes, I do.

Q Okay. All right.

A Yes, sir.

Q Okay.

A Yes.

Q0 All right. And I take it by your title that you would
11 be the person in the company with the most or the best
12 knowledge in that area, is that fair to say?

A3 In what area?

Q4 The area of determining whether a position ought to be
15 exempt or non-exempt, putting aside what somebody
16 actually does, because you don't have that
17 information?

A8 I would disagree with that.

Q9 Okay. Who might that be?

A0 There is no one person, unless -- unless we farm it
21 out to outside counsel. As I'd -- it's a
22 collaborative effort between human resources and the
23 on-site personnel.

Q4 Okay. All right. And in the case of Mr. -- in Mr.
25 Zuber's lawsuit, we had a lot of discussion about
that. There was a process, if you will, and don't let

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1 me put words in your mouth, okay, but there's a
2 process whereby the field department and human
3 resources would get together, figure out what a guy
4 did, apply the regulations and decide whether or not
5 they ought to be classified exempt of non-exempt, is
6 that fair to say?

A No.

Q All right. What would be fair to say?

A That may happen.

Q Okay.

A But the job site may take the initiative to undertake
12 that review, and it's not required to consult with
13 human resources. But if there is an issue, like I
14 said before, it's a collaborative effort, and then a
15 determination is made.

Q Okay. So at some point human resources has to get
17 involved to make a determination, is that right.....

A No.

Qor wrong?

A That's not what I said.

Q Okay. Well, I'm trying to.....

A It may get involved.

Q Okay. Well, can the job site say, gee, this ought to
24 be exempt or non-exempt and switch it and have no
25 involvement from human resources?

A They can.

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Q Don't you have to put out a new job position
description or change to get the name changed or the
description changed at payroll so the pay is
different?

A There's -- there is a process that is accomplished
through filing paperwork to change job titles and so
on. Again, getting back to the number of employees,
the number of transactions, I do not see every
transaction that passes through the company.

Q Okay. Do you know of any instance where a job got
changed from exempt to non-exempt and human resources
had no involvement with it?

A I'm try -- I'm sure there's cases out there, yes.

Q Okay. Could -- could you.....

A I can't cite any, but.....

Q Because nobody told you, right?

A Yeah.

Q Yeah, it's.....

A Yeah.

Q Okay. All right. Okay. What expertise do the people
in the field departments, if that's the right way to
put it, have in determining whether or not an
individual ought to be classified exempt or non-
exempt?

A They have access to the appropriate wage and hour
regulations, the appropriate -- at the time the short

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1 and long tests that were issued to guide individuals
2 in making an assessment whether the position is --
3 should be appropriately classified as exempt or -- or
4 not.

Q Okay. And those short and long tests were distributed
6 to the field divisions back in '97 or so?

A I can't answer that for sure. I don't know.

Q Okay. All right. Did you review any of the exhibits
9 from your deposition?

A0 No.

Q1 Okay.

12 MR. COVELL: Why don't we start with number 1,
Madame Clerk.

14 MS. ZOBEL: And I believe we decided yesterday
this is going to be B-1.

16 MR. COVELL: That works for me.

17 MS. ZOBEL: Okay. I'm glad you're here again
today.

19 COURT REPORTER: Thank you.

20 MR. COVELL: Yeah. We like continuity.

21 MS. ZOBEL: The same court reporter. She
wasn't -- we weren't sure we'd get her back today.

23 MR. COVELL: Okay. Let me put the sticker on
that, Madame Clerk.

25 (Deposition Exhibit B-1 marked)

COURT REPORTER: All right. Exhibit B-1

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marked.

2 MR. COVELL: All right. Here you go.

3 (By Mr. Covell) I'm handing you B-1. This purports
4 to be a memo from yourself December 26th, 1996. The
5 subsequent pages concern exemptions under the State
6 Wage and Hour Act, and, let's see here.

7 MS. ZOBEL: It looks like you're missing a
page.

9 MR. COVELL: All right. And which page might
10 be missing, do you know?

11 MS. ZOBEL: Well, the last page ends in the
12 middle of a sentence.

13 MR. COVELL: Okay.

14 MS. ZOBEL: I don't know whether it was
15 included when he sent that or not, but.....

16 MR. COVELL: I think this is the way I got it.

17 MS. ZOBEL: Okay. That's fine.

18 MR. COVELL: And if you feel there's a reason
19 to supplement it, I'm more than happy to.....

20 MS. ZOBEL: Sure. I'll take a look.

21 MR. COVELL:leave that open.

22 MS. ZOBEL: I did not bring down the
23 deposition or the records that pertain to Mr. -- I'm assuming
24 you got this out of Mr. Zuber's file?

25 MR. COVELL: Right. This would be from the
Zuber file.

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1 MS. ZOBEL: And I did not bring those records
2 with me, so.....

3 MR. COVELL: And I haven't done this, and it
4 didn't occur to me until after I'd copied them all, for the
5 point of our clarity, it would have been real helpful that
6 anything that's from Zuber we'd put a Z before the APC, on the
7- that won't be on your stickers, Madam Clerk, but just for
8- because we have in this case APC with sequential numbers.
9 As a matter of fact.....

10 MS. ZOBEL: And these are going to not be the
11 same numbers as the documents which we produced to you in this
12 case. APC 0184 is not this record in the.....

13 MR. COVELL: In this case, did you.....

14 MS. ZOBEL:in Gilbert.

15 MR. COVELL:start like at 1,000 in
16 Gilbert or something?

17 MS. ZOBEL: I have -- we started at 1.

18 MR. COVELL: Oh. Right.

19 MS. ZOBEL: 00001.

20 MR. COVELL: So that's what I'm saying, so in
21 so in Gilbert there will be an APC 184, right? So.....

22 MS. ZOBEL: Right. And it's not this
23 document.

24 MR. COVELL: Right. So what I'm saying is, we
ought to put -- I should have put Z's in front of them all,
but.....

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1 MS. ZOBEL: You could ask the witness to do
that, and I have.....

3 MR. COVELL: Right. That's.....

4 MS. ZOBEL:no problem with it happening.

5 (By Mr. Covell) That's what I'd like you to do. If
6 you could put a Z before that APC on the bottom right-
7 hand corner of the page, please.

8 MS. ZOBEL: Actually the APC number seems to
be obliterated.

10 MR. COVELL: Obliterated. I'm still going to
put a Z there.

12 MS. ZOBEL: All right.

13 MR. COVELL: And on the following pages, and
I'll try to keep up with this either through myself or the
witness. And if anybody wants to remind me we're not doing
that, it would be good.

17 MS. ZOBEL: Was that a look at me, that I'm
supposed to remind you?

19 MR. COVELL: I was.....

20 MS. ZOBEL: I'll be happy to remind you.

21 MR. COVELL:only suggesting that one
morning, you know, you'll be going through the papers and
going is this a Zuber or.....

24 MS. ZOBEL: I know. I agree.

25 MR. COVELL: Right.

Q (By Mr. Covell) Okay. All right. So getting back

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1 to B-1 here, Mr. Boyle, and why don't you look with me
2 in the -- in the body of the letter, I think there's a
3 paragraph or sentence in there saying, here's the
4 regulations for your use. See if you can identify
5 that, and I'll look for it, too.

6 (Pause)

Q Okay. In that paragraph that starts with 1, the
8 second sentence, see the sentence, provided as
9 guidance is an attached document which provides
10 functional definitions of exempt employees in
11 administrative, executive, and professional positions.

A Uh-huh. (Affirmative)

Q Okay.

A Okay.

Q So it would appear from this exhibit that in 1996 you
16 sent out this document to various people in the field,
17 is that so?

A Correct.

Q Okay. All right. So they would have had that
20 resource available to them in the field?

A Yes.

Q All right. And then it's your expectation, or your
23 understanding of the way classification works at your
24 company, that the field people would make a
25 determination as to whether or not an individual was
exempt or non-exempt, sometimes with consultation with

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1 you and your department, and sometimes without?

A Yes.

Q Okay. All right. Okay. To your knowledge was there
4 ever an investigation, review or examination of the
5 position of safety specialist as to whether or not it
6 was exempt or non-exempt for purposes of overtime?

A I believe Mark -- Mark Nelson had undertaken such a
8 review.

Q And this is -- I'm distinguishing safety supervisor
10 from safety specialist.

A1 I thought you had just said specialist?

Q2 If I said that, that's not what I wanted to say,
13 so.....

A4 Could you restate.....

Q5 Okay. You bet.

A6 then, please?

Q7 As to the classification of safety specialist, which
18 was the second job Mr. Gilbert had after he got
19 promoted.....

20 MS. ZOBEL: No, that.....

A1 No.

22 MR. GILBERT: No.

23 MS. ZOBEL:would be safety supervisor.

24 MR. COVELL: Okay. I'm misstating it. I'm
grrry. Safety -- safety supervisor. Thank you for correcting
me.

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Q (By Mr. Covell) The second job that he had, safety
2 supervisor, was there ever an investigation,
3 examination, whatever you want to call it, as to
4 whether or not that job ought to be classified exempt
5 or non-exempt?

A Not to my knowledge.

Q Okay. All right. Is that something that you likely
8 would have been aware of?

A Not necessarily.

Q Okay. Not even since the Zuber case? Okay. The
11 Zuber case involved the classification of safety
12 specialist, right?

A Yes.

Q And you were involved in that matter?

A Yes.

Q And if that precipitated somehow or ever was just
17 temporally related to a review of safety supervisor,
18 wouldn't you think that was something that you would
19 be -- either be involved in or at least hear about?

A Well, no, I disagree with that.

Q Okay.

A Because I think the cases were so close together in --
23 in the time frame that it doesn't apply.

Q Okay. So if such a thing were to happen and you might
25 or might not be involved as human resources, but
apparently you weren't, because either it didn't

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1 happen or you didn't hear about it, would the other
2 person or persons who would know about it be Doug
3 Smith?

4 I can't answer that. I can't speculate on what he may
5 have done or not.

6 Q Not -- don't speculate, but assume that some nature of
7 review was done in that regard, okay? Let's say
8 somebody comes in your office, says, Mr. Boyle,
9 there's been a review done somewhere here in the
10 company, do you know about it? No, sir, I don't.
11 Well, who should we call to try to find out, or who do
12 you think might have involved in doing this?

13 MS. ZOBEL: Objection, calls for speculation.
14 You can go ahead and answer if you know.

15 A Logically I would either direct the person to the
16 business unit manager, or the safety director of the
17 corporation.

18 Q (By Mr. Covell) Okay. And who's the safety director
19 of the corporation?

20 A I think at that -- that time it was Doug Smith.

21 Q Okay. All right.

22 A There -- there had been some changes, and he was
23 elevated to that position approximately that time.

24 Q Okay. All right. And even if it weren't Mr. Smith,
25 he could tell you who was before him or after him if
 there's a time frame issue there?

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A Yes.

Q Okay. Good. All right. And then as far as unit manager goes, and I recognize that people are moving around and we have different times here, but at one point is it correct that Mark Nelson was the unit manager for the job Mr. Gilbert would have been in?

A Yes, at Kuparuk.

Q Okay. All right. Okay. All right. Besides those two individuals-slant-jobs, are there any other either people or positions that would have been involved, or might have been involved in such a review?

A It could be the individual that occupies the position.

Q Okay. And tell me how that might come about?

A Well, from the standpoint of clearly identifying day-to-day activities and responsibilities, it would be logical to talk to the people that are actually performing the job.

Q Okay. All right. And if a review was done, it would then make sense to say, what do you do every day, because even if somebody's job description says they're doing A, because of the pressure of the work place, they may indeed be involved doing B all day instead, even if they don't want to be?

A Possibly.

Q Okay. All right. And so if people in the field were to make the determination as to whether somebody was

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1 exempt or non-exempt, I believe I asked you what
2 expertise they might have in that area, and that's how
3 I believe we got off on these attachments to Exhibit
4 1, besides having that resource to make that
5 determinations, what other skill, expertise or tools
6 might they have to make the determination of exempt or
7 non-exempt?

8 MS. ZOBEL: Calls for speculation.

9 MR. COVELL: Okay. Well.....

A0 Yeah, I would be speculating.

Q1 (By Mr. Covell) Right. Well.....

A2 You'd -- you'd have to go back and review each
13 individual's educational background, had they attended
14 special courses on this. That I don't know.

Q5 Okay. All right.

16 MS. ZOBEL: If you want to narrow it down to
one individual or several individuals, he might.....

18 MR. COVELL: Okay.

19 MS. ZOBEL:have knowledge of that.

Q0 (By Mr. Covell) All right. Well, what expertise
21 might Doug Smith have in that regard, if you know?

A2 I don't.

Q3 Okay.

A4 I don't know.

Q5 All right. What expertise might Mark Nelson have in
that regard, if you know?

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A I don't know.

Q Okay. All right.

3 (Off record comments)

Q The safety supervisor job no longer exists, right?

A I -- I'm not certain about that.

Q Okay.

A I don't know.

Q I think it's been represented to us that that job got
9 reclassified or organized sometime in the range of
10 2003. You don't know?

A1 I don't know.

Q2 Okay. All right. When -- in any event, when the job
13 existed, it was classified as exempt or do you know or
14 not know?

A5 Yes.

Q6 Okay.

A7 It's my understanding.

Q8 All right. Among the classifications of exemption,
19 there are at least administrative, professional and
20 executive, and perhaps others. Which of these
21 classifications of exemption was the safety supervisor
22 job in?

A3 I don't know.

Q4 Okay.

A5 It could have been in any -- any one of those that you
listed.

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Q Okay. All right. And you've never had opportunity to
do the analysis of that position as to whether or not
it's exempt or not exempt?

A No.

Q All right. And this is a redundant question, but I'm
asking it to be clear for the record, so forgive me,
you've never done the analysis to figure out whether
or not it fits into administrative, professional,
executive or other categories either?

A No.

Q All right. Do you know when that job was created?

A I don't.

Q Okay. I had been under the impression from some
materials it had started when Mr. Gilbert took the
job, which would have been January of '01 I believe,
but.....

MS. ZOBEL: January of '02.

Q January of '02. Okay. All right. But he indicated
to me that wasn't the case. Do you have any
information off the top of your head in that regard.

A I don't.

Q Okay. All right. Do you remember that job existing
say in '94 or '97?

A I would have to speculate on that, because I
don't.....

Q That's fine. That's.....

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AI didn't belong to.....

Qlet's move on.

Athe organization.

Q Okay. All right.

A In fact, I wasn't even employed in '94.

Q When we did your deposition last time, we'd been asking for a job description of safety supervisor, and it was represented to me by Mr. Youngman that it didn't exist, and we discussed that during your deposition. First of all, do you recollect that, or had you -- and/or.....

12 MR. COVELL: I know it's compound, and you can object.

Q4and/or had you seen that in your review of your deposition recently?

A6 I don't recall the discussion, but I reviewed that in the deposition, yes.

Q8 Okay. And do you believe that to be true, that.....

A9 That's correct. I'm not aware of a job description that's available.

Q1 Okay. All right. Yesterday in a deposition we got G-2, which was a job description. Do you know where that came from and -- well, okay. And then the next question I'll ask you is when it was created?

A5 I don't know to either question.

Q Okay. Does human resources keep copies of job

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1 descriptions?

A At -- at the time that was retained at the job site.

Q Okay.

A And it currently is as a matter of fact.

Q So the practice still is, is to keep the job
6 description at the job site?

A If they exist to begin with.

Q Okay. And so you don't necessarily have one for every
9 job?

A10 No.

Q11 Okay. All right. And I'm probably be redundant here,
12 but that's the current practice as well? You don't
13 have a centralized file of job descriptions in
14 Anchorage?

A15 Not -- well, not at this point. We are developing one
16 though.

Q17 Okay.

A18 We're working on that as a -- as a project this year.

Q19 Okay. Who would know, or if you wanted to find out --
20 well, okay. Who would know when, where, why, how that
21 was developed, if you know?

A22 Would you restate the question? I'm not sure
23 what.....

Q24 Okay. There's a job description for safety
25 supervisor. I'll represent that to you. We saw it
yesterday. Okay. Assume that to be true. And.....

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A Back in 2000, 2001, is that the time frame you're
2 requesting?

Q Well, from the date of your deposition in 2003, I
4 think, until today, it would appear that that job
5 description was created or written. Do you think --
6 is that fair to say?

A I have no knowledge of that.

Q Okay.

A I don't know.

Q Well, if nobody can find one in '03, either it didn't
11 exist or nobody could find it, right? Would you.....

A Agree.

Qagree with that? Okay. So between '03 and
14 yesterday, either somebody found it or wrote it.
15 Would you agree with that?

A Yes.

Q Okay. So what I'm trying to get at is who either
18 found it or created it?

A I don't know.

Q Okay. If you were looking for that, how would you go
21 about trying to find out that information?

A If I was looking for the job description, or the
23 individual who found it or created it, because.....

Q How it came to be on this earth?

A I would have to go back to the job site, Kuparuk.

Q Okay. And.....

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A And start asking questions.

Q And would Doug Smith be the guy to go to on that?

A He would probably be one of the people.

Q Okay.

A Yes.

Q Any other names that come to mind, names.....

A No.

Qor positions.....

A No.

Qthat come to mind that would be a resource to
11 find that information?

A Again the business unit manager.

Q Okay.

A Gary Buchanan.

Q Okay. All right. Do you or your department review
16 job descriptions when they're created?

A Again, what time frame?

Q Between your deposition and yesterday?

A I have not other than the ones that we've created
20 within the department beginning the mid part of last
21 year.

Q Okay. And that's part of your on-going project to get
23 a data base as you -- if you will of job descriptions?

A Yes.

Q Okay. All right. And this would be a redundant
question, but during the course of that, you haven't

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1 done one for -- haven't reviewed one for safety
2 supervisor, right?

3 A There prob -- I'm not sure if there is one existing
4 for that position given our current project. I mean,
5 we've got about 250 job titles, and I don't recall
6 each one specifically.

7 Q So the description we saw yesterday might have come
8 out of your building data bank of job descriptions, is
9 that right or wrong?

10 A I can't answer that. I'd have to take a look at the
11 job description you're referring to.

12 Q Okay.

13 MR. COVELL: Let's go off record.

14 (Off record)

15 (Deposition Exhibit B-2 marked)

16 (On record)

17 COURT REPORTER: We're back on record at 9:37.

18 Q (By Mr. Covell) What you have before you, Mr. Boyle,
19 is marked Exhibit B-2 which was also marked G-2 in Mr.
20 Gilbert's deposition yesterday for the record.

21 Q That's the job description I was talking about. In
22 looking at that, does that does it jog your memory as
23 to whether you've seen it before or not?

24 A I have not seen that, no.

25 Q Okay. All right. Is that in a format of the job
descriptions that are going into your data bank?

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A No.

Q Okay. All right. Does -- and again, it's -- can you
3 tell from looking at it, if that looks like something
4 that might have been generated in the field?

A It looks like, yes.

Q Okay. All right. Excellent.

7 MS. ZOBEL: May I see it, Chris? Thank you.

8 (Pause)

Q (By Mr. Covell) When that job description -- assuming
10 that job description was created in the field, would
11 it have been appropriate for the person that did it to
12 consider whether or not it was an exempt or non-exempt
13 position?

A I would think so, yes.

Q Okay. Is there any paperwork trail that would
16 accompany that consideration?

A Not that I'm aware of on this particular document
18 here.

Q Okay.

A I don't know if there's any back up to it.

Q Okay. Should there be?

A If there was a question about whether it is exempt or
23 not, there hopefully would have been some analysis
24 performed.

Q Okay. And we may have covered this. We've covered it
either this time or last time, but try and move things

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1 along, I'll give you a little narrative here. Ms.
2 Zobel can object. But are the types of things that
3 would precipitate an examination of exempt or non-
4 exempt be a complaint from an employee, a question
5 from a supervisor, some correspondence from the
6 Department of Labor, things of that nature?

A It could be any one of those.

Q Okay. All right. Do you know if Mr. Gilbert ever
9 made a complaint about whether or not he was getting
10 overtime?

A1 Not that I'm aware of.

Q2 Okay. If he did make such a complaint, what should
13 APC, and let me just use APC as a blanket name, APC or
14 Natchiq as a blanket name for whatever name the
15 company might have at the time. What should APC do
16 about that?

A7 I would think there would be some higher level review
18 of the complaint, like we perform with any -- any
19 complaint on a routine basis.

Q0 Okay. So if he went -- he's a safety supervisor, and
21 he went to his boss and said, hey, I'm not getting
22 overtime, I ought to get overtime, what level would
23 that get reviewed at in that instance? Or should it
24 get reviewed at?

A5 It all depends. It may stop with a discussion with
the upper level supervisor, you know, that direct

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1 report or it may go on to the next higher level.

2 That's up to the individual supervisor.

Q Okay. And in this instance, if Doug Smith was the
4 next level up, it might end with him, or it might go
5 from Doug Smith to who or what position?

A To his bus -- his supervisor, which I believe at the
7 time was Gary Buchanan, the business unit manager.

Q Okay. All right. And then -- is it correct then that
9 they should be making an examination as to whether or
10 not the job ought to be exempt or non-exempt?

A1 There -- there would hopefully be some review if there
12 was an issue, a question about the status.

Q3 Okay. All right. And then -- this could be a
14 multiple question, but would there be paper -- would
15 or should there be paperwork to commemorate that
16 examination for exempt/non-exempt status?

A7 There may or may not be, depending upon the complexity
18 of the issue.

Q9 Okay. From the point of view of your job, would you
20 find it desirable if there was?

A1 Yes.

Q2 Okay.

A3 Yes.

Q4 And from the point of view of somebody else trying to
25 decide what happened, would you agree that having
commemorative paperwork would be helpful?

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A It would be helpful, yes.

Q Okay. You may have answered this question for me
3 already, but to be clear, are you currently familiar
4 with the position description for safety specialist
5 and safety supervisor?

A Am I familiar with the job descriptions?

Q Sure. Yes.

A No.

Q Okay. All right. Are you familiar with either of
10 them?

A1 The one that you just provided.....

Q2 Okay. Because it just.....

A3yes, although I didn't review it, you know.

Q4 It just passed by you?

A5 Yes.

Q6 Okay. Beyond that -- okay. Put that one aside. Are
17 you familiar with the safety specialist job
18 description?

A9 The last one I reviewed was in the Zuber case.

Q0 Okay. All right. Are you aware of -- or if you can
21 answer the question, okay, what's the differences
22 between the duties of the safety supervisor and the
23 safety specialist, if that's within your knowledge?

A4 Again, I don't know what the safety supervisor
25 actually did on a day-to-day basis.

Q Okay. And the person or persons to address those

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1 types of questions to would be Mr. Smith, Mr. Gilbert
2 or whoever filled those positions, and perhaps Mr.
3 Buchanan.....

4 Yes.

5or Mr. Buchanan's job? All right. Very good.
6 You have fairly extensive experience in, I want to say
7 human relations, it's human resources, right? And we
8 went.....

9 Yes.

10 Okay. All right. And that's -- you've been with the
11 department at APC since '94?

12 Again, I work for ASRC Energy Services and I when I
13 hired on it was Natchiq.

14 Okay.

15 And APC is a subsidiary of Natchiq.

16 Okay. But you.....

17 But, yes, I've been with.....

18 You've been in HR.....

19the organization.

20since you've been here in '94?

21 December 1994.

22 Prior to that, you were at Marathon for.....

23 Marathon Oil.

24 And you were in HR for some number of years before
25 that?

A Yes.

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Q And you -- is -- your training isn't initially in HR,
2 right, it's something else? Am I.....

A No, it is.

Q Oh, okay. All right. So you've got a degree in labor
5 relations?

A Yes.

Q And what year was that roughly?

A 1980.

Q Okay. So you've been in labor relations, human
10 relations for your career, is that right?

A1 Yes.

Q2 Okay.

13 MS. ZOBEL: Human resources.

14 MR. COVELL: Human -- I'm sorry, human
resources. That's why I always like calling it personnel. I
15 just never was able to make the switch. Okay.

17 MS. ZOBEL: A big difference.

18 MR. COVELL: Yeah. Uh-huh. HR/ER, but that
19 might be emergency room, so -- all right.

20 MS. ZOBEL: We could call it HR.

21 MR. COVELL: HR.

A2 Sure.

23 MR. COVELL: HR. I'll try to work with that.

24 MS. ZOBEL: That works with either human
relations or human resources.

MR. COVELL: There you go.

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1 MS. ZOBEL: So you don't have to worry about
2 which one you're referring to.

3 MR. COVELL: All right.

4 A good point.

5 (By Mr. Covell) Do you feel that you're competent to
6 make determinations as to whether or not a position a
7 position ought to be exempt or non-exempt for purposes
8 of overtime?

9 A Given the proper background information on specific
10 activities of the position, and being able to
11 adequately compare that with the wage and hour
12 regulations, and in consultation with job site
13 personnel, yes.

14 Q4 Okay. Do you feel that the people in the field who
15 make these decisions about exempt/non-exempt are
16 competent to make those decisions?

17 MS. ZOBEL: Objection, overly broad.

18 Q8 You can answer.

19 MS. ZOBEL: The people in the field is broad.

20 A Well, the.....

21 (By Mr. Covell) Go ahead.

22yeah. The -- the project supervision, again
23 going through the same process that I would go
24 through, consult with their support resources, yes.

Q5 Okay. And that answer holds even recognizing they may
not have the same training and experience that you do?

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A Yes.

Q Okay. When you do an analysis -- or you've done
3 analysis of exempt/non-exempt status for overtime over
4 the years, is that right?

A Correct.

Q Okay. When you do that, do you consider the state 20
7 percent test?

A Yes.

Q Okay. Do you know whether or not the people in the
10 field do that?

A1 It's part of the language in the regulations. So I
12 would say they would have to if they're comparing the
13 position with the wage and hour definitions of the
14 classifications.

Q5 Okay. When you do that, how do you do an analysis as
16 to whether or not somebody spends 20 percent of their
17 time doing non-exempt work?

A8 Well, again you have to get back to the day-to-day
19 functions of the position and analyze that.

Q0 Okay. And my understanding from talking to you this
21 time and last time is that you're not up north
22 watching the guy in the Carharts and the gloves do his
23 job, so you don't know what they do from day-to-day,
24 right?

A5 That's correct.

Q Okay. So I take it you have to get that information

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1 communicated to you somehow?

A Yes.

Q All right. And then do you do a time analysis where
4 you break down and say, this individual works a 12-
5 hour day, and four hours a day they're at task A, and
6 four hours a day they're at task B, and four hours a
7 day they're at task C, and then do the math for the
8 20-percent number?

A Well, I'm not sure if it gets that detailed.

Q0 Okay. Tell me.....

A1 Again, you would have to actually get out there and
12 consult with the individual job site personnel,
13 consult with the individual if appropriate that's
14 actually performing the job, and make an educated
15 decision based on the relevant wage and hour laws.

Q6 Okay. Without finding out how many hours a day
17 somebody spends on a particular task, can you make a
18 reasonable analysis of whether or not they're spending
19 20 percent of their time on non-exempt duties?

A0 I think you can.

Q1 Can you explain that to me?

A2 Well, you've got a set number of hours in a day, and
23 the person doesn't do exactly the same thing every
24 single day, and you have to take a look at the
25 functions on a day-to-day basis, you know, are they --
are they filing for 10 minutes and then out in the

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1 field making independent decisions and applying
2 discretion in their -- their jobs, you know.

Q Well, isn't it a gross analysis of the time, saying
4 you file 10 minutes, and you're in the field making
5 independent decisions the rest of the day, therefore I
6 know something in the range of 90 or 95 percent of
7 your time's spent on exempt duties?

A Well, that's -- that was just an example that I cited.

Q Okay.

A0 You know, that the -- that the process would have to
11 be followed to actually analyze the position.

Q2 Okay. But that -- isn't that a less formal
13 application if you're going to analyze what somebody
14 does hour-by-hour, minute-by-minute?

A5 Well, again, I just use that as an example.

Q6 Sure.

A7 It may be a more formal process that's applied given
18 the position and the need to analyze individual
19 functions.

Q0 Are you aware of any case in considering positions for
21 classification where ACP -- APC did an hour-by-hour as
22 it were analysis of what somebody did?

A3 Not that I'm aware of.

Q4 Okay. And, of course, you're aware that there's -- or
25 at least there were two different sets of rules as to
overtime, one under the state law, and one under the

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1 federal law?

A Yes.

Q Okay. And are the people in the field that made these
4 exempt/non-exempt decisions aware of that?

A Yes, I believe.

Q Okay. They should be in any event?

A They should be.

Q Okay. APC kept some nature of time records for its
9 employees, right? Time -- hours worked?

A10 Yes.

Q11 Okay. In this case I'd represent to you we've been
12 provided with two sets of time logs for Mr Gilbert.
13 One set shows 10 hours a day consistently, and one set
14 shows one day worked. Are you familiar with that?

A15 No, I'm not.

Q16 All right. Is that something that you would expect to
17 see provided in this case?

A18 I can't comment on that. I don't know what documents
19 you're referring to.

Q20 Okay. All right. Well, let me show you here.

21 COURT REPORTER: Would you like me to go off
22 record for a moment?

23 MR. COVELL: Sure. That would.....

24 COURT REPORTER: All right.

25 (Off record)

(On record)

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1 COURT REPORTER: We're back on record at 9:54.

Q (By Mr. Covell) Mr. Boyle, I've placed in front of
3 you pages that are marked APC I believe 84 through --
4 I don't know, there's another -- well, to.....

5 MS. ZOBEL: It's 48.

Q Forty-eight to.....

7 MS. ZOBEL: You're reading upside down.

Qto 84 is one style of documents, and then 85 to
9 the end is another style of document.

A Okay.

Q Okay. Not -- actually not.....

12 MS. ZOBEL: Actually I don't believe that's
Q correct.

14 MR. COVELL: Okay. That's not correct. Let
me back -- I withdraw that question.

Q (By Mr. Covell) You've got some papers in front of
17 you. What's the first number on the first page in
18 front of you, sir?

A Forty-eight.

Q Okay. And what's the last number on the last page in
21 front of you?

A Eighty-five.

23 MS. ZOBEL: No.

A Oh. 103.

Q All right. And I represent to you those were
disclosed to me in Natchiq's 26(A) disclosure received

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1 by me around January 5th, 2004. Okay. All right. Do
2 you know what those are?

A Not specifically. I can speculate that this top
4 document, 0048, is some reference to time.

Q All right. Some nature of time.....

A Yes.

Qrecord, right? And that reflects 10 hours a day
8 consistently, is that right?

A Yes, there's a column, straight -- straight time
10 hours, 10.

Q1 Okay. And it starts in January of -- or, no.....

A2 September 2002 on this.....

Q3 Okay.

A4particular document.

Q5 All right. And there are pages and pages that are
16 nearly identical to that, right?

A7 Yes.

Q8 All right. So it would appear that -- okay. Do you
19 know if that -- all right. Let's look at the second
20 set of papers, there -- for whatever -- any one of
21 those.

A2 Any one?

Q3 Just say what number that is, if there is one. Of
24 course, there isn't, right?

A5 I don't see a number.

MS. ZOBEL: No, there isn't. It's been cut

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off.

Q (By Mr. Covell) All right. So go to the next page,
3 try to keep those in order, please. The next one
4 behind it or before it.

A We're looking for a number?

Q Sure.

7 MS. ZOBEL: Here's a number.

Q APC 114, okay? And that reflects one hour a day
9 worked, right? Or, pardon me, one day worked per day
10 I guess.

11 MS. ZOBEL: These are not in order, because we
12 the last date is APC 103 that.....

13 MR. COVELL: Okay.

14 MS. ZOBEL:you had him -- and this is
15 114, so.....

16 MR. COVELL: Okay.

Q7 (By Mr. Covell) Apparently they're out of order, but
18 in any event you're looking at 114. Does that also
19 appear to be some nature of time record?

A20 Yes. It's titled weekly time sheet.

Q21 Okay. There you go. And as far as units per day
22 worked, what does it indicate?

A23 One.

Q24 And would you take that to mean -- what would you take
25 that to mean? One what?

A I would assume that that represents the person worked

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1 on that particular day.

Q Okay. So it's one -- would it be fair to say one day
3 worked?

A Yes.

Q Okay. And it's not one hour worked, right? We
6 wouldn't expect that?

A No, at -- one of the -- I mean, the columns are titled
8 days.

Q Okay. All right.

A Days worked. Or.....

Q All right. Besides those time records, are you aware
12 of any other time records that APC might have for Mr.
13 Gilbert?

A Not that I'm aware of.

Q Okay. Mr. Gilbert submitted what might be called a
16 daily log that has an indication of hours worked per
17 day, varying in the ranges of 11, 12, 13, 14 hours.
18 Do you have any information that would dispute his
19 representation that he worked those hours?

A I have no seen the documents you're referring to, so
21 really I can't comment on it.

Q Okay. Would you like to? Would that be helpful in
23 answering the question?

A Yes.

Q All right. So why don't we get this back here, and
I'll get that out of your way.

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1 MR. COVELL: We're not going to mark that as
2 an exhibit.

3 Q Okay. I'm going to hand you what's in discovery
4 entitled Plaintiff's Initial Disclosures, and I'll
5 refer you to any number of these pages. Ms. Zobel has
6 a copy there for you. Does that appear to be a day
7 planner or log looking material?

8 MS. ZOBEL: You're on page 87?

9 Q Just pick one with a bunch of entries. Okay. And
10 we're looking at page 87. Have you seen this document
11 or a similar form of this document in this case
12 before?

13 A No.

14 Q Okay. Do you see how, for instance, on Tuesday,
15 August 6th, there's a 12 written here?

16 A Yes.

17 Q And then on the 7th, 13.5, and then on the 8th, 12,
18 and then on the 9th, 14, and then on Saturday the 1st,
19 12, and on Sunday the 11th, 13?

20 A Yes.

21 Q All right. I represent to you that Mr. Gilbert says
22 those are the hours he worked that day. And I had
23 asked you if you had any records besides the ones we
24 looked at in your disclosure that would indicate the
25 hours he had worked when he worked for you?

A Not that I'm aware of.

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Q Okay. And besides written records, do you have, or --

2 MR. COVELL: Let me withdraw that.

Q Does APC have any information that would contradict
4 Mr. Gilbert's assertion he worked particular hours on
5 particular days?

A Not that I'm aware of.

Q Okay. Thank you. There we go, we're back to the
8 other glasses.

9 MR. COVELL: Why don't we go off for just a
second.

11 COURT REPORTER: Sure.

12 (Off record)

13 (On record)

14 COURT REPORTER: All right. We're back on
record at 10:04.

Q6 (By Mr. Covell) Earlier we talked about your
17 involvement in the case, and I think you said
18 something to the extent of very little, and not -- or
19 to be redundant, to be thorough, what do you have to
20 do with this case?

A1 I'm not sure.

Q2 Okay. What have you done on this case so far?

A3 Nothing.

Q4 Okay.

A5 Other than read my previous deposition.

Q Have you been involved.....

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A And I think I have worked with Counsel on
2 documentation requests and discovery requests.

Q Okay.

A Although I don't even remember what -- what was
5 generated, because most of the material had already
6 been submitted.

Q Okay. Do you know, besides the -- what I might call
8 mundane materials, the payroll record, his personnel
9 file, do you know if there are any papers that exist
10 that concern the classification of the safety
11 supervisor position as exempt or non-exempt?

A I'm not aware of any.

Q Okay. And is it correct that if such papers existed,
14 one would expect to find them in your office?

A Not necessarily.

Q Okay.

A No.

Q In your prior deposition I think you indicated
19 something to the effect that you or your office would
20 be the central point for the gathering of papers of
21 that nature, do you recollect saying that?

A I think that was in reference to discovery requests.

Q Okay. All right. If there are papers that
24 commemorate a review of the exempt/non-exempt status
25 of the safety supervisor, would you -- would the
places you expect to find them be your office, or in

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1 the appropriate field office?

A They could be in either one.

Q Okay. Those would be the places you would look?

A That's where I would look, yes.

Q All right. Okay. So besides what you've already told
6 me, that's been your extent of involvement in this
7 matter?

A Yes, I've had very little very little involvement.

Q Okay. Believe me, there are times I want a no answer,
10 you know. No -- yeah, that's better.

11 MS. ZOBEL: Is that our phone?

12 MR. COVELL: Yeah, I'm ignoring it.

13 MS. ZOBEL: Okay.

14 MR. COVELL: But thank you.

15 (Whispered conversation)

16 (Pause)

Q7 (By Mr. Covell) Okay. During the course of -- okay
18 at one point you did get involved in the analysis of
19 the exempt/non-exempt status of the safety specialist
20 position, is that right? Or wrong?

A1 I don't believe I did.

Q2 Okay.

A3 I think Mark Nelson was performing that -- that
24 initial review along with several other positions at
25 the time.

Q All right. And when that was going on, you were in

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1 the loop in Mark Allen -- Mark Nelson's activities?

A Not specifically, no.

Q Okay. Let me hand you, and these should be Z's, a
4 memo.....

5 MR. COVELL: Here, why don't we go -- what
have we got? 3?

7 COURT REPORTER: B-3.

8 MR. COVELL: B-3. Let me stick that on there.

9 (Deposition Exhibit B-3 marked)

10 MR. COVELL: Here's a copy for you, Ms. Zobel.

Q1 (By Mr. Covell) A memo from Mark Nelson to Anne
12 Hippe, and I -- if -- don't wrack your brain, but does
13 this look familiar to you? If it doesn't, I've got
14 some other paperwork that will probably refer back to
15 this.

A6 Yes. Yes, it does.

Q7 Okay. And I'm trying to speed things up. Was this
18 something that sort of was at the beginning of Mr.
19 Nelson looking onto whether jobs are exempt or non-
20 exempt?

A1 Well, from what I can recall, there was an article
22 attached to this that's referenced as the Forbes
23 Magazine attached article.

Q4 Right.

A5 And there was a particular case that addressed exempt
status, and I think he had some questions about that

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1 which generated this.

2 Okay. And you saw that at some point relatively
3 speaking contemporaneous to December '96?

4 I don't recall exactly when, but it was ultimately
5 forwarded on to me, yes.

6 Okay. All right. And did that eventually -- and.....

7 MS. ZOBEL: I'm sorry, could I ask what B-2
8 is?

9 MR. COVELL: B-2 is G-2, isn't it?

10 MS. ZOBEL: Oh, all right. All right. Thank
11 you.

12 MR. COVELL: All right.

13 MS. ZOBEL: I didn't mean to interrupt you.
14 My apologies.

15 MR. COVELL: I would rather get it straight
16 now than be pulling my hair out at three in the morning.

17 MS. ZOBEL: Yeah, I'm sitting here with a
18

19 MR. COVELL: Yeah.

20 MS. ZOBEL:and a 3.

21 MR. COVELL: Yeah.

22 (By Mr. Covell) Okay. All right. And then do you
23 recollect that that generated sort of subsequent
24 follow-on correspondence between yourself/Mr. Nelson,
25 Mr Nelson/Randy Carr? And I'll get you some papers
here, but I'm trying to work along. Does that ring

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1 any bells with you?

A Yes, I'm not sure specifically if this memo generated
2 the subsequent activity, but on or about that time
3 frame there were several issues going on that were
4 being reviewed.
5

Q Okay. All right. Let me hand you another one, a
6 letter dated December 26, '96. Come on now.
7

8 MS. ZOBEL: I believe you've already produced
that.....

10 MR. COVELL: Oh, that's that one.

11 MS. ZOBEL:Counsel, that's Exhibit 1.

12 MR. COVELL: Okay.

13 MS. ZOBEL: B-1.

14 MR. COVELL: Excellent. Thank you. All
right.

16 MS. ZOBEL: You don't have that, Mister.....

A7 Oh.

18 MS. ZOBEL:Chris. B-1, please?

19 COURT REPORTER: I do not have B-1.

20 MR. COVELL: It's right here.

A1 Isn't it? Yeah.

22 MS. ZOBEL: Oh, all right.

23 MR. COVELL: Okay.

24 MS. ZOBEL: I'm sorry.

Q5 (By Mr. Covell) All right. So this B-1 letter is
from you, and if you look at that last sentence of the

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1 first paragraph, it says, in addition, it's
2 appropriate to review whether personnel currently paid
3 as exempt are properly classified. It says that,
4 right?

A Under number 1?

Q Right.....

A The first.....

Qright there.

9 MS. ZOBEL: We have a different letter.

Q0 Okay. December 26, '96.

A1 Yes.

12 MS. ZOBEL: This isn't a December 26th, '96
letter.

14 MR. COVELL: I've got it here.

A5 That's what I've got.

16 MR. COVELL: Okay. And what do you have?

17 MS. ZOBEL: The same thing. You gave it to
me.

19 MR. COVELL: Okay. All right.

Q0 (By Mr. Covell) And looking at the last sentence of
21 the first full paragraph, can you read that for me?

A2 The main issue is whether the day rate is an
23 appropriate form of payment under wage and hour laws.

24 In addition, it is appropriate to review -- it is
25 appropriate to review whether personnel currently paid
as exempt are properly classified.

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Q Okay. So that was a direction to -- okay. Who are
2 these folks at the top of the page there, to?

A Don Dieckmeyer, Scott Eliason, Dick Frederick, Lee
4 Gabrielson, Jack Laasch -- just business unit heads.

Q Okay. Unit managers.....

A Yes.

Qgenerally speaking?

A Not -- not all out in the field though.

Q Okay. But.....

A0 Lead people.

Q1 Okay. And then this is -- the -- I think this -- what
12 -- the letter is on a day rate issue, but you're
13 saying also, take a look at your people and see
14 whether they're exempt or non-exempt, right?

A5 Yes.

Q6 Okay. And then you say here are the attachments,
17 here's some guidelines to work with that we talked
18 about earlier?

A9 Yes.

Q0 Okay. And that's December 26th, which is the -- you
21 know, the end of -- the day after Christmas. You were
22 working?

A3 I could have been, yes.

Q4 All right. Did you get.....

A5 Darn it. Maybe we can talk.

MS. ZOBEL: Oh, Chris, you didn't say that.

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A Yeah. Strike that.

2 MS. ZOBEL: Yeah.

3 MR. COVELL: I'll stipulate to that being
4 stricken from the record.

Q (By Mr. Covell) Okay. So it's some weeks after that
6 that Anne Hippe memo, which is B-4 [sic] I believe.

7 Yes.

Q Right. Okay. And then subsequent to that, April 4,
9 '97, we get another letter from you.

10 MR. COVELL: Will you mark that sequentially,
please, Madame Clerk.

12 COURT REPORTER: I'm sorry. You just referred
to something as B-4, this is B-4.

14 MR. COVELL: Okay. I stand corrected.

15 COURT REPORTER: We do not have a B-4.

16 MR. COVELL: Whatever the Anne Hippe letter of
17 December 7, '96.....

18 COURT REPORTER: That's B-3.

19 MR. COVELL: B-3.

20 COURT REPORTER: All right.

21 MR. COVELL: That's what I meant to say.

22 COURT REPORTER: Right now we're going to mark
B34.

24 MR. COVELL: That's what we want.

25 (Deposition Exhibit 4 marked)

MS. ZOBEL: And this should also be marked as

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Q Z.....

2 MR. COVELL: Excellent.

3 MS. ZOBEL:APC 010.....

4 MR. COVELL: Yes.

5 MS. ZOBEL:80 -- 180.

6 MR. COVELL: Thank you. And do we have any
other ones here that should be Z's? I think we.....

8 MS. ZOBEL: I think Madam Clerk has put a Z on
every one of them so far.

10 MR. COVELL: Excellent.

11 COURT REPORTER: Yes.

12 MR. COVELL: Thank you.

13 MS. ZOBEL: You may want to put them on yours.

14 MR. COVELL: I want to, but I can't walk and
chew gum at the same time, so I'm not getting there. But
thank you.

17 MS. ZOBEL: You're welcome.

Q8 (By Mr. Covell) Okay. All right. Mr. Boyle, looking
19 at B-4, this is continuing correspondence along the
20 vein of day rate and wage and hour classification, is
21 that right?

A2 Yes.

Q3 Okay.

A4 I'm not -- however, I'm not sure if it's connected
25 directly with the December 7th memo from Mark Nelson
to Anne Hippe, Toby Osborn.

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Q Okay. Is it either indirectly connected or at least
2 addressing as far as exemption goes the same subject
3 matter?

A Well, it's addressing -- this -- the April 4th letter
5 is addressing specifically the appropriateness of day
6 rate.

Q Okay. Well, I'm looking at the second paragraph.
8 Alaska has no specific wage -- okay, that's fine.
9 Thank you for helping me here. Looking at the second
10 paragraph, it says -- why don't you read that for us,
11 please?

A Alaska has no specific wage and hour law addressing
13 the payment of a day rate to exempt employees. Of
14 course, the first step an employer must take is to
15 properly classify an employee as exempt, parenthesis,
16 not eligible for overtime, or non-exempt. I've
17 previously provided some information on this subject
18 and would recommend we again look at the foreman and
19 similarly classified employees to ensure their status
20 can stand up to the exemption test.

Q Okay. Is it fair to say that that paragraph is a
22 reiteration of the sentence in the April 4th letter
23 that says, I have previously -- hang on. We're in the
24 April 4th letter. In the perhaps B-1 exhibit, the
25 December 26, '96 letter, in addition, it is
appropriate to review whether personnel currently paid

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1 as exempt are properly classified. Do you want me to
2 repeat it?

A Yes, please.

Q Okay. The second paragraph of the April 4 letter, is
5 it fair to characterize that as a follow up to the
6 December 26th letter at the last part of the first
7 paragraph that talks about whether people are properly
8 classified as exempt or non-exempt?

A Again, I don't think there is a direction connection
10 between the December 26th letter and this April 4th
11 letter.

Q2 Okay.

A3 This -- the April 4th letter appears to be
14 specifically addressing foremen, and this is -- this
15 -- the December 26th letter seems to be addressing
16 just the general issue of exempt versus non-exempt.

Q7 Okay. So December 26th is more general, and April 7
18 [sic] is more specific as to foreman?

A9 Based on that paragraph that I read, yes.

Q0 Okay. All right. Would -- is it reasonable to think
21 a safety supervisor for purposes of analysis for
22 classification as exempt or non-exempt as a foreman?

A3 I would disagree with that.

Q4 Okay.

A5 Based on the little knowledge I have of both those
positions and what they do.

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Q Okay.

A They're entirely different functions.

Q And what's the difference in the functions?

A The foreman may be actual -- they could be working foremen actually down -- down there working with the -- with the crews, clearly a non-exempt position in my opinion, versus a safety supervisor who, you know, may have other duties.

Q Okay. But a safety supervisor as well could be down there working with the crews as well, right?

A1 To perform functions? No.

Q2 Couldn't be?

A3 No.

Q4 A safety supervisor couldn't be doing a.....

A5 They're not going to be down there digging ditches, they're not going to be down there hammering nails.

Q7 And neither would a safety specialist, right?

A8 I wouldn't think so.

Q9 Okay. But a safety supervisor -- well, do you know if safety supervisors at least at times did the same work as a safety specialist?

A2 I don't know.

Q3 Okay. Would that surprise you if that was the case?

A4 No.

Q5 Okay. All right. Is it fair to say that as far as guys that pound nails or turn wrenches, have a first

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1 line supervisor and that's the foreman?
A They've got someone that they report to.
Q Okay. And.....
A I don't know if it would be the foreman or some other
5 position.
Q Well, what other position might it be?
A There could be other lead positions.
Q Okay. And what might they be called?
A Lead.
Q Okay. All right. And are they a separate job
11 description from mechanic or plumber?
A Yes, it may be.
Q Okay. Okay. All right. And at this time did you
14 have a concern that people in lead positions may or
15 may not be properly classified as exempt or non-
16 exempt?
A I don't believe there was a concern on those
18 positions, because they were classified as non-exempt.
Q Okay. And then is it correct that the foreman as far
20 as exempt and non-exempt go were a mixed?
A I don't know at that time. I -- I can't recall.
Q Okay. But in any event, this letter is saying is take
23 a look at those jobs and figure it out, guys?
A Yes.
Q Okay. All right. Okay. And had somebody gone and
looked at the safety supervisor position in receiving

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1 this letter, that would have been okay with you,
2 right?

3 MS. ZOBEL: I'm going to object, because I
4 don't think that position was even in existence at that time.

5 MR. COVELL: Do you know when the position
6 came into existence?

7 MS. ZOBEL: You can ask Doug Smith, he'll
8 know.

9 MR. COVELL: Okay. All right.

Q10 (By Mr. Covell) Had the safety specialist --
11 supervisor position existed at that time, and somebody
12 got ahold of this memo and examined that, whether
13 they're exempt or non-exempt, would that have been
14 okay with you?

A15 I don't understand your question.

Q16 All right.

A17 What are you.....

Q18 Somebody's out in the field, Doug Smith or Buchanan or
19 Mark Nelson, and they get this memo, and they read
20 it.....

A21 Uh-huh.

Q22 and they say, yeah, Mr. Boyle sent me a memo, I
23 should look at foremen and see if they're classified
24 right. Okay. And they go and say -- whether you
25 intend it or not, they say, well, foremen, safety
supervisor, I'm going to look at the safety supervisor

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1 position to see if they're classified properly or not.

2 Had that happened, would that be okay with you as HR?

3 Well, you would be asking me to speculate. This memo

4 may -- may be a key to individuals that, hey, well,

5 let's while we're at take a look at other positions.

6 Okay. All right. Okay. All right. Now actually if

7 you turn to the second page of that and look under

8 recommendations, the first sentence says,

9 recommendations relative to date rate issues, but the

10 first recommendation is review all occupations where

11 there may be questions concerning whether they are

12 properly classified as exempt, non-exempt, foremen and

13 other personnel whose actual job responsibilities and

14 duties may not meet the overtime test. Would it be

15 reasonable for somebody to take that directive to say,

16 we should look at the safety supervisor position and

17 review it for exempt/non-exempt status?

18 MS. ZOBEL: Assuming that it existed.

19 (By Mr. Covell) Assuming that.....

20 Yes.

21it existed. All right.

22 Assuming.

23 Okay. Okay. When -- if a job doesn't exist and it's

24 created, is it the policy of APC to examine it for

25 exempt or non-exempt status?

A Yes, they should have reviewed or at least considered

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1 the -- the proper classification.

Q Okay. All right. And the last page of that exhibit,
2 the second to last paragraph indicates in the second
3 line, federal wage and hour law is very complex. Do
4 you agree with that?
5

A I do.

Q Okay. And in reading your deposition, did you see
6 that last time we took your deposition we found a
7 number of different instances where there were
8 comments like that in the materials we dealt in that
9 case, saying this is a complex area, you can consult
10 the Department of Labor and comments about it being
11 complex?
12

A Yes.

Q Okay. And your answers to those questions haven't
13 changed?
14

A No.

Q Okay. All right. All right. Let me hand you a
15 letter from Mr. Nelson to Mr. Carr, June 19, '97.
16

20 MR. COVELL: And let me get that marked,
please. And that should get a Z on it, too, as Ms. Zobel has
21 been so helpful in pointing out.
22

23 (Deposition Exhibit B-5 marked)

24 MR. COVELL: And we've got.....

25 COURT REPORTER: B-5 marked.

MR. COVELL:G-5 [sic]. Okay.

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Q (By Mr. Covell) Are you familiar with this document,
2 Mr. Boyle.....

A Yes.

Qin a general way? And you saw it at -- during
5 your last deposition? I represent to you I believe
6 you saw that during.....

A Yes.

Qyour last deposition. Okay. All right. And you
9 -- did you see this at some point relatively
10 contemporaneous to June 19, '97?

A1 I don't know.

Q2 Okay.

A3 I think when I first saw that was during the last
14 deposition.

Q5 Okay. All right. In any event, this would appear to
16 be a correspondence from Mr. Nelson to Mr. Carr who
17 was then with the State Department of Labor concerning
18 whether or not a materials supervisor position would
19 be exempt or not, right?

A0 Yes.

Q1 And he sent materials and asked for Mr. Carr's opinion
22 on that, right?

A3 Yes.

Q4 Okay. All right. As far as either the safety
25 specialist position and/or the safety supervisor
position, assuming they existed on June 19.....

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1 MS. ZOBEL: Of what year?

2 MR. COVELL: '97.

Q (By Mr. Covell) June 25, I'm sorry. APC could have
4 sent a similar correspondence to the Department of
5 Labor and asked for a similar determination, is that
6 right?

A It could have, yes.

Q Okay. And to be thorough, as far as you know, that
9 was never done?

A0 Not to my knowledge.

Q1 Okay. Okay. I'm sorry, and that was the June 19.

12 Okay. Now I'm going to hand you a June 25 letter.

13 MR. COVELL: That will be 6 I believe.

14 (Deposition Exhibit B-6 marked)

15 COURT REPORTER: B-6 marked.

16 MR. COVELL: And that should get a Z as well.

17 COURT REPORTER: I have placed a Z on there.

18 MR. COVELL: Excellent.

Q9 (By Mr. Covell) All right. And do you recollect
20 seeing this letter and the attached letter from Mr.
21 Carr to Mr. Nelson, which is also labeled WHOL number
22 122?

23 (Pause)

A4 I don't believe I've seen the June 25th letter to
25 Randy Carr signed by Mark Nelson; however, I have seen
the -- the Carr response to Nelson.

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Q Okay. And did you see that relatively contemporaneous
2 to June 26th, 1997?

A I think I saw that at the time of the Zuber case
4 deposition.

Q Okay.

A As far as I recall.

Q Okay. All right. So in APC producing this letter
8 from Mr. Carr back in '97, do you know if it came from
9 field files or from HR files?

A Randy Carr's letter?

Q Right.

A I don't recall where it came from.

Q If you can answer the question, where would you expect
14 in 2003 relatively speaking a 1997 letter would have
15 come from? This 1997 letter would have come from?

A In 2003?

17 MS. ZOBEL: You're talking about in production
from -- in the Zuber case?

19 MR. COVELL: Right. Right.

A I don't recall.

Q Okay. That's fine. That's fine.

A It was a Mark Nelson letter.

Q All right. You would expect -- is it fair to say you
24 would have expected it either to come from HR files or
25 from the field files?

A Yes.

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Q Okay. All right. All right. And this WHOL letter --
2 well, let me ask you this. Do you know if APC has any
3 other WHOL letters?

4 MS. ZOBEL: Are you talking about an at all
period or relative.....

6 MR. COVELL: Sure. Yeah.

7 MS. ZOBEL:relative to this case?

8 MR. COVELL: At all period.

A There may have been others that Mark Nelson received.

Q0 (By Mr. Covell) Okay.

A1 I -- I can't cite them specifically.

Q2 Okay.

A3 Again, it would have been relative to what was
14 produced in the Zuber case.

Q5 Okay.

A6 I haven't reviewed any of the exhibits.

Q7 Well, backing up into a broader question, do you have
18 an HR file or binder that says APC WHOL letters or
19 something similar?

A0 No, I -- I don't have anything like that.

Q1 Okay. All right. Is this something that you either
22 would like to or think you ought to have on file at
23 HR?

A4 It would be nice to have those on file. Yes.

Q5 Okay. All right. But as far as you know, you don't,
is.....

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A No.

Qthat right? Okay. All right. Drawing your
attention -- well, drawing your attention to Mr.
Nelson's portion of that exhibit, that last paragraph
there, it says, please respond in writing to give us a
definition as to how it works, and the cautions of
classifying an employee the supervisor -- as a
supervisor. We can easily find the classifications
for administrative, professional and executive, but do
not see a clear path for supervisors. And I guess I
should have started at the -- at the last sentence of
the above paragraph. The discussion surrounding
supervisors as being exempt from overtime pay, paren,
premium pay, close paren, but yet have to be paid for
all hours worked has been difficult to pull from the
regulations. Do you see that text?

A7 Yes.

Q8 Okay. And that concerns an issue that -- and is it
correct that that concerns an issue that even if
someone is exempt, if they're a supervisor, they're
entitled to be paid for all hours worked, is that so?
A2 There's a reference to that language in -- in the
regulations but the interpretation of how that's
applied is left for interpretation.

Q5 Okay. All right. And then Mr. Carr responds to that
in his letter, and is it fair to say that Mr. Carr

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1 essentially says that that's the case, that a
2 supervisor has to be paid for all hours worked, but
3 doesn't have to be given premium pay?

4 Can you cite where you're referencing that?

5 Sure. You bet.

6 MS. ZOBEL: Why don't we go off the record and
give him an opportunity.....

8 MR. COVELL: Yeah, that's fine.

9 MS. ZOBEL:to read the letter?

10 MR. COVELL: That works. And.....

11 (Off record)

12 (On record)

13 COURT REPORTER: We're back on the record at
14:39.

15 (By Mr. Covell) Mr. Boyle, we were looking for an
16 area of the Randy Carr letter, and I'm speculating
17 you're about to direct me to that next to last
18 paragraph of the letter, is it.....

19 Correct.

20 Okay. All right. And so that letter indicates that
21 supervisors should be paid for every hour worked, but
22 they don't get premium pay, i.e., half time again on
23 those extra hours, is that right?

24 Let's clarify the paragraph we're referring to. Does
25 it start out with exempt administrative or the
explanation?

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Q Well, let me rephrase the question. You were going to refer to part of the letter and respond to my question. What part of the letter were you going to refer to?

A The second to the last paragraph, exempt administrative employees.

Q All right. And what direction does that give to Mr. Nelson and APC as to how to pay employees under the state wage and hour act?

A It just references that exempt admin -- I can just read it. I mean, that's the direction.....
(indiscernible - simultaneous speech).....

Qanswer is it says what it says, is that the answer?

A Yes.

Q Okay. All right. That's fine. All right. What action did APC take to pay all -- to pay supervisors for all hours worked in response to this WHOL 122, if any?

A I don't know what actions Mark Nelson took. This was referring to the materials supervisors.

Q Okay. That's not my question. Let me be more specific. I take this to say that you need to pay as an employer individuals who are supervisors, pay for every hour worked. Okay? Not at an overtime rate, but a straight time rate. Is that what you take it to

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1 mean?

A I would disagree with your -- I think what you're
3 getting at. I would disagree with that.

Q Okay. What would you take it to mean?

A If -- what -- what this is saying is if the
6 individual's an exempt employee, if -- if they're
7 working you do have to pay them for -- for the time
8 that they work and whatever that particular daily or
9 weekly pay rate is, or pay amount is, that's what you
10 have to pay them. You're not required to pay premium
11 pay, time and a half.

Q2 Right. But you are to pay -- if somebody works.....

A3 But it doesn't mean that you pay the person, if
14 they're working 18 hours in a day, it doesn't mean
15 that you pay them each and every hour that they
16 actually work. As a -- as a definition of an exempt
17 employee, they get paid a straight weekly rate, a
18 daily rate.

Q9 Okay. So a person might interpret this to mean if
20 they got a day rate for 12 hours for -- well, pick a
21 number I guess, \$475 for a day rate, and they worked
22 16 hours, that they ought to get an additional four
23 hours at the rate of 475 divided by 12?

A4 That would not be my interpretation, no.

Q5 Okay. But the question is, not -- I'm not saying
that's your interpretation. A person might interpret

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1 that to be what this is saying, is that fair to say?

A I disagree. You're asking me to interpret your
3 interpretation.

Q No, I'm asking you to interpret what it says here, and
5 I'm asking you, if somebody were to make that
6 interpretation of this, would that be a reasonable
7 interpretation?

8 MS. ZOBEL: Asked and answered.

Q I'll ask it.....

A10 Exactly. I was just going to say, I answered that
11 already, and that would be my.....

Q2 And your answer.....

A3interpretation.

Q4is that, no, that would not be a reasonable
15 interpretation?

A6 That's correct.

Q7 Okay. All right. So is it correct to say -- well,
18 okay. Is it correct -- yeah, is it correct to say
19 then that APC took no action to pay supervisors pay
20 for all hours worked? Or let me put it this way. APC
21 didn't change what it was doing in paying its
22 employees based upon the advice in this letter?

23 MS. ZOBEL: I'm going to object. I think he's
asked -- you've asked and answered that, and he said he did
not know what action was taken in response to this letter.

Q (By Mr. Covell) All right. Go ahead and answer the

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1 question.

A And that would.....

Q Thank you.

A Yeah, that would have been my response. And.....

Q Your response is you don't know?

A I don't know what steps Mark Nelson may have taken as
7 a result of this letter.

Q Okay. If APC had done that -- how many people do you
9 have who might fit that category?

A10 What category?

Q11 The category of people who are exempt but under the
12 interpretation I suggested would be entitled to
13 additional monies?

A14 None if they're classified as exempt. They get paid
15 what they're set up to get paid, whether it's a day
16 rate or a weekly rate or a monthly rate.

Q17 Okay. But if the correct interpretation of this is
18 contrary to what yours is, and that they were entitled
19 to additional monies, how many people would fit in
20 that category?

A21 I have no idea.

Q22 Okay. Can you estimate?

A23 No, sir, I can't.

Q24 Okay. If APC decided, and they said, Mr. Boyle, we'd
25 like -- you've worked for us for years, we believe
you're wrong on that issue, we believe it means we

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1 have to pay additional monies, and we're going to pay
2 additional monies. Is that something you would have
3 been involved in or been aware of?

4 If that determination was made, I'm sure many people
5 would have been involved, including myself yes.

6 Q So had APC paid additional monies pursuant to this,
7 that's something you would have known about?

8 A I mean, if.....

9 MS. ZOBEL: It calls for speculation.

10 A Again, if it's.....

11 MR. COVELL: That's -- I'll let him.....

12 Aif it's a -- if it's a.....

13 Q (By Mr. Covell) You can answer.

14 Aone off, probably not.

15 Q All right.

16 A But if it's a -- you know, it affects many, many
17 people, and that was your original question. You said
18 if all these people were all of a sudden falling under
19 this interpretation, would I be involved, then, yes.

20 If it's a one off situation, probably not.

21 Q And what does one off mean?

22 A You'd have to go back to the number of materials
23 supervisors of that particular asset. There may have
24 been two that -- that I knew of.

25 Q All right. So you.....

A There may have been four. I don't know.

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Q One off means a small number of people?

A Yes.

Q Okay. All right. Okay. All right.

4 MR. COVELL: And we got that marked, right?
That's number G-5? 6?

6 MS. ZOBEL: B-6.

7 MR. COVELL: B-6, okay. All right. And.....

8 MS. ZOBEL: You have it marked at G-6? I
believe it's B-6.

10 MR. COVELL: Yeah. Thank you.

11 MS. ZOBEL: This is Mr. Boyle.

12 MR. COVELL: Thank you. I've called him Mr.
Boyle consistently, too.

14 MS. ZOBEL: Yes, you have.

Q5 (By Mr. Covell) As far as interpreting those sections
16 we talked about, are you aware of any written
17 commemoration of an analysis of what that meant?

A8 Not that I'm aware of, no.

Q9 Okay. Would you expect that there is one?

A0 I would have no idea.

Q1 Okay. All right. Thank you.

22 (Pause)

Q3 And as far as this case goes, do you expect to testify
24 as to whether or not Mr. Gilbert as a safety
25 supervisor was exempt or non-exempt?

A I'm -- I'm sorry?

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Q As far as this case goes, Gilbert versus APC, do you
2 expect to testify at trial or give evidence otherwise
3 that Mr. Gilbert as a safety supervisor was exempt
4 from overtime?

A If called, yes.

Q Okay. And -- okay. And I take it your opinion will
7 be that as a safety supervisor, he was exempt from
8 overtime?

A My opinion, yes.

Q Okay. All right. And what do you base that opinion
11 on?

A The individual, number 1, as far as I know, what
13 little I know of the position, had direct
14 responsibilities for carrying out assigned tasks,
15 making sure the organization or department completed
16 assigned tasks, may have had supervisor
17 responsibilities for personnel, carrying out
18 management directives, policies, procedures.

Q Let me interrupt you. To -- until today, had you done
20 this analysis in preparation for this case? In other
21 words, prior to today, had you done an analysis of
22 that nature as to whether or not the safety supervisor
23 job was exempt or non-exempt?

A Of that particular position?

Q Correct.

A No.

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Q Okay.

A No.

Q All right. Okay. And it would be correct to say that
4 whether or not Mr. Gilbert filled in for Mr. Smith up
5 north in Mr. Smith's position, you have little or no
6 knowledge of that circumstance?

A I don't.

Q Okay. And since you haven't done that analysis yet,
9 you can't tell us what category of exemption -- is it
10 fair to say, since you haven't done that analysis yet,
11 you can't tell us what category of exemption the
12 safety supervisor would fall into?

A3 No.

Q4 Okay. Do you know how many hours the clerical staff
15 at Kuparuk health and safety office worked on a
16 regular basis?

A7 That particular staff? No.

Q8 Okay. Do you expect that it would have been 12 hours?
A9 I can say the general work schedules on the Slope are
20 anywhere from 10 hours to 11 and a half hours.

Q1 Okay.

A2 Specific to that department, I don't know.

Q3 Okay.

24 (Pause)

Q5 It's been represented to me that the position of
safety supervisor has been reclassified around April

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1 of 2003. Am I clear in understanding your testimony
2 today that you were not involved in that
3 reclassification?

4 No, I was not.

5 Okay. I thought you were telling me it was not clear,
6 so thank you. Again to be clear, and hopefully not
7 too redundant, you -- do you know anything about that
8 or you don't know anything about that, if that was
9 done or not?

10 That's correct.

11 Okay. Okay. And again to be clear, and hopefully not
12 redundant, do you know if material supervisors were
13 ever paid for all hours they were suffered or
14 permitted to work?

15 I would have to go back and take a look at time
16 sheets, individuals who occupied that job title.

17 Okay. You have no information that.....

18 I have.....

19they were?

20 No.

21 Okay. APC has asserted a good faith defense in this
22 case. What -- are you aware of that?

23 Doesn't that -- that's a legal conclusion. I -- I'm
24 not sure what.....

25 Okay. Well.....

A(indiscernible - simultaneous speech) there.

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Q Well.....

2 MS. ZOBEL: You're asking if he knows whether
we have asserted an affirmative defense of having classified
in good faith?

5 MR. COVELL: Yes.

6 MS. ZOBEL: Okay.

A Yes.

Q Okay.

A Yes.

Q0 You're aware of that. Okay. What documentation is --
11 will APC rely upon in asserting that defense, if you
12 know?

A3 I have no idea. That's -- that would be something
14 referenced to counsel.

Q5 Okay. Okay.

16 (Pause)

17 MR. COVELL: Off record.

18 (Off record)

19 (On record)

20 COURT REPORTER: We're back on record.

21 MR. COVELL: That's all I have, thank you.

22 MS. ZOBEL: And I have no questions.

23 (Off record)

* * * END OF PROCEEDINGS * * *

24

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S I G N A T U R E

1
STATE OF ALASKA)
2) ss.
THIRD JUDICIAL DISTRICT)
3

4 I, **CHRISTOPHER B. BOYLE**, have read the
5 foregoing deposition and have made corrections thereto. Any
6 and all changes, explanations, deletions and/or additions to
7 my testimony may be found on the correction sheet(s) enclosed
8 with this transcript.

9 CHRISTOPHER B. BOYLE

10
STATE OF ALASKA)
11) ss.
THIRD JUDICIAL DISTRICT)
12

13 THIS IS TO CERTIFY that on this _____ day of
14 _____ 2006, before me appeared **CHRISTOPHER B.**
BOYLE, to me known and known to be the person named in and who
15 executed the foregoing instrument, and acknowledge voluntarily
16 signing and sealing the same.

17
18 Notary Public in and for
19 State of Alaska, at Anchorage
20 My Commission Expires: _____

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C E R T I F I C A T E

UNITED STATES OF AMERICA)
) ss.
STATE OF ALASKA)

I, Jerri Young, Notary Public in and for the State of Alaska and Reporter with Metro Court Reporting, do hereby certify:

THAT the annexed and foregoing Deposition of **CHRISTOPHER B. BOYLE** was taken before Cheri Tabor on the 1st day of June, 2006, commencing at the hour of 9:00 a.m., at the DeLisio Moran Geraghty & Zobel, P.C., 943 West Sixth Avenue, Anchorage, Alaska, pursuant to Notice to take said Deposition of said Witness on behalf of the plaintiff;

THAT the above-named Witness before examination, was duly sworn to testify to the truth, the whole truth, and nothing but the truth;

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THAT this Deposition, as heretofore annexed, is a true and correct transcription of the testimony of said Witness taken by Cheri Tabor and hereafter transcribed by Meredith Downing;

3 THAT the original of the Deposition transcript will be
lodged in a sealed envelope with the attorney requesting
transcription of same, as required by Civil Rule 30(f)(1)
amended, that attorney being:

5

MR. KENNETH L. COVELL, Attorney at Law, 712 Eighth
6 Avenue, Fairbanks, Alaska 99701;

7 THAT I am not a relative, employee or attorney of any
of the parties, nor am I financially interested in this
8 action.

9 IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my seal this 3rd day of July 2006.

10

11

12

Jerri Young
Notary Public in and for Alaska
My Commission Expires: 11-03-07

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